

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TUCSON AUDUBON SOCIETY

THIS AGREEMENT is entered into April 30th, 2003, pursuant to Arizona Revised Statutes, Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the Tucson Audubon Society acting by and through its BOARD OF DIRECTORS (the "Tucson Audubon Society").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tucson Audubon Society is empowered by its Board of Directors to enter into this agreement, and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Tucson Audubon Society.

3. Incident to a bridge replacement and erosion control improvement project on State Route (SR) 264 between milepost (MP) 408.10 (+/-) and MP 408.99 (+/-) contemplated by the State, part of the work will impact lands owned, controlled or under the jurisdiction of the United States Army Corps of Engineers (USACE). The USACE requires the mitigation of the project area lands by replacing habitat. To meet that requirement, the State and the Tucson Audubon Society desire to participate in one of four options-+, the acquisition, enhancement, management or maintenance of land suitable for the habitat replacement at a cost currently estimated at \$3,440.00 all at State expense.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 25985
Filed with the Secretary of State
Date Filed: 04/30/03

Janice K. Brewer
Secretary of State

By: Tim D. Graenewald

II. SCOPE OF WORK

1. The Tucson Audubon Society will:

a. Be the lead agency for the Project, conduct all necessary studies and investigations towards determining the most appropriate site for the mitigation. The Tucson Audubon Society will combine the \$3,440.00 in-lieu fees for mitigation related to the permanent loss of wash habitat within jurisdictional waters of the United States along SR 264 with other Tucson Audubon Society studies to the State for review and comment.

b. Upon execution of this agreement invoice the State \$3,440.00 for their participation in the mitigation of the project area lands.

c. Provide the State with a description of the site where mitigation will occur and a project budget upon receipt of \$3,440.00 payment from the State.

2. The State will:

a. Upon receipt of an invoice pay the Tucson Audubon Society an amount not to exceed \$3,440.00 as the cost of the mitigation effort, at the time of the beginning of construction along SR 264.

b. Review the studies and provide comments as appropriate.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said project and payments, provided; however, that this agreement may be cancelled at any time prior to the commencement of performance under this agreement, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon execution by the parties hereto.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of state employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

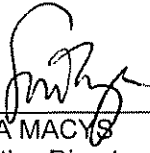
The Tucson Audubon Society
300 E. University Boulevard, Suite #120
Tucson, AZ 85705

7. The Project Manager will provide copies of the check and transmittal letter to the Corps, which will serve to demonstrate the successful transfer of mitigation funds.

8. Attached hereto is the written determination of each party's legal counsel the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

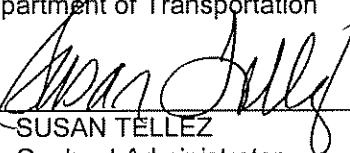
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE TUCSON AUDUBON SOCIETY


By 
SANJA MACYS
Executive Director

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
DR. R. WILLIAM MANNAN
Secretary of the Board

RESOLUTION
TUCSON AUDUBON SOCIETY
BOARD OF DIRECTORS

MARCH 3, 2003

MOTION:

The Tucson Audubon Society Board of Directors approves the Agreement Between the State of Arizona and The Tucson Audubon Society referenced as follows on the contract document:

AG Contract No. KR02-1993TRN
ADOT ECS File No. JPA 02-184
Project: BR-STP-264-A(002)A
TRACS No. H5506 01C
Item No. ID1E
Section: Jeddito Wash Bridge, Habitat Mitigation

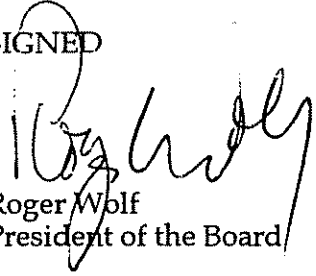
And authorizes Sonja Macys, Executive Director, and Dr. R. William Mannan, Secretary of the Board, to execute this agreement on behalf of the Tucson Audubon Society.

ACTION TAKEN:

☒ Motion passed, March 3, 2003

☐ Motion failed, March 3, 2003

SIGNED

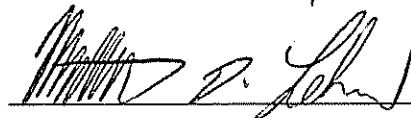

Roger Wolf
President of the Board

JPA 02-184

APPROVAL OF THE TUCSON AUDUBON SOCIETY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TUCSON AUDUBON SOCIETY and declare this agreement to be in proper form and within the powers and authority granted to the Corporation under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 3d day of April, 2003.

A handwritten signature in black ink, appearing to read "M. D. Lehn", is written over a horizontal line.

Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1993TRN (JPA 02-184), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED April 23, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.